

REMARKS

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

The rejection of claims 34 and 42 under 35 U.S.C. § 112 (2nd para.) for indefiniteness is respectfully traversed in view of the above amendments.

The rejection of claims 34 and 42 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,573,082 to Choi et al. ("Choi"), U.S. Patent No. 6,503,511 to Wizemann et al. ("Wizemann"), or U.S. Patent No. 6,291,654 to Hostetter et al. ("Hostetter") is respectfully traversed.

Choi discloses antigenic polypeptides of *Streptococcus pneumoniae*. It is the position of the U.S. Patent and Trademark Office ("PTO") that the claimed polypeptide molecule of the present invention, i.e., SEQ ID NO: 13, is 54.1% identical to the SP023 polypeptide molecule (i.e., SEQ ID NO: 38) disclosed in Choi.

Wizemann relates to derivatives of choline binding proteins for vaccines. In particular, Wizemann discloses polypeptide molecules encoding *Streptococcus pneumoniae* choline binding proteins (CBPs). It is the PTO's position that the claimed polypeptide molecule of the present invention, i.e., SEQ ID NO: 13, is 86.5%, 85.8%, and 55.4% identical to the *S. pneumoniae* CBP-encoding polypeptide molecules (i.e., SEQ ID NOs: 9, 6, and 16, respectively) disclosed in Wizemann.

Hostetter discloses a protein molecule encoding a C3 binding protein from *Streptococcus pneumoniae*. It is the PTO's position that the claimed polypeptide molecule of the present invention, i.e., SEQ ID NO: 13, is 68.1% identical to the *S. pneumoniae* C3 binding protein molecule (i.e., SEQ ID NO: 6) disclosed in Hostetter.

However, by amending the claims to call for an isolated or purified polypeptide comprising PspC, where the polypeptide "has the amino acid sequence" (emphasis added)...of SEQ ID NO: 13, the PTO's basis for alleging that the claims cover portions of the above sequences has been obviated.

Since none of the cited references teaches the specific amino acid sequence of SEQ ID NO: 13, as recited in the amended claims, the rejection under 35 U.S.C. § 102(e) should be withdrawn.

Finally, applicants note that the PTO-1449 form (that accompanied the July 21, 2004, Supplemental Information Disclosure Statement) attached to the outstanding office action was not initialed. Applicants hereby request that the examiner indicate consideration of the July 21, 2004, Supplemental Information Disclosure Statement by initialing the accompanying PTO-1449 form and return the initialed PTO-1449 form with the next communication from the PTO.

In view of all of the foregoing, applicants submit that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

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